

OLC 78-0836/1

10 April 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Proposed Amendments to S. 2117, the Federal Tort  
Claims Act Amendments

1. On 3 April I discussed the newest 30 March 1978 version of the provisions for disciplinary hearings which is to be added to S. 2117 with Bob Carlstrom, of OMB. I told him that we objected to the deletion of section 7802(a)(3) because it had a national security exemption. I also explained to him the method by which the previous amendments permitted us to short circuit participation in the hearings by non-cleared persons.
2. I also pointed out that sections 7805(c) and 7803(D) were inconsistent because the former said "the reviewing agency" while the latter said "a reviewing agency" (the latter would permit more than one agency) and that if the IOB was intended as a possibility the word "entity" should be used rather than "Agency." I also said that the DCI, rather than the IOB, should make the regulations under proposed 7805(c) and that the "assume jurisdiction" language of proposed sections 7802(b)(2) and 7803(D) was unnecessary and confusing.
3. Mr. Carlstrom said that OMB wished to change proposed section 7804 so that only the matters specifically protected by Executive Order or statute would be reviewed in camera, rather than an entire decision which involves these matters. I said we had no problem with the concept but would like to see the language.
4. After some negotiation, we agreed on several changes to proposed section 7802. They are indicated in pencil on the draft sent by OMB on 30 March 1978. It should be noted that the language permits a determination that in the interests of national security the person aggrieved by the tortious conduct should not be notified of the investigation or be permitted to participate. Also, if the aggrieved person is not notified, he cannot appeal under proposed section 7802(c)(2).

Not referred to OMB. Waiver  
applies.

5. I also suggested language which would make the disciplinary proceedings provisions applicable only to claims or suits based upon conduct which occurred after passage of S. 2117. This would prevent its applicability to the mail-opening cases.

6. [ ] OGC, concurred in all suggested language.

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[ ]  
Office of Legislative Counsel

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